

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



January 6, 2006

Agenda ID # 5243  
Quasi-Legislative

TO: PARTIES OF RECORD IN RULEMAKING 99-11-022

This is the draft decision of Administrative Law Judge (ALJ) DeBerry. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed **15** pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ Angela K. Minkin  
Angela K. Minkin, Chief  
Administrative Law Judge

ANG:avs

Attachment

Decision **DRAFT DECISION OF ALJ DeBERRY** (Mailed 1/6/2006)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Into  
Implementation of Public Utilities Code § 390.

Rulemaking 99-11-022  
(Filed November 18, 1999)

**OPINION DENYING PETITION OF JUNIPER GENERATION, LLC  
AND PE BERKELEY, INC. FOR MODIFICATION OF  
DECISION 05-09-003**

**Summary**

This opinion denies the petition of Juniper Generation, LLC and PE Berkeley, Inc. (Petitioning QFs) requesting that Decision (D.) 05-09-003 be modified to defer the effective date of D.05-09-003 to July 30, 2006<sup>1</sup> (QF Petition).

**Procedural Background**

On December 15, 2004, Pacific Gas and Electric Company (PG&E) filed a petition to modify D.01-03-067 to the extent that D.01-03-067 requires a payment within 15 days to Qualifying Facilities (QF), rather than the 30-day payment schedule existing prior to adoption of D.01-03-067<sup>2</sup> (PG&E Petition). PG&E requested that it be relieved of the obligation to pay QFs within 15 days of the end of the QF billing period. In response, Petitioning QFs contended that good reason existed for continuing the 15-day payment period, and therefore PG&E's Petition should be denied. Petitioning QFs contended that their relationships with their gas suppliers would be harmed if PG&E's Petition were granted.

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<sup>1</sup> D.05-09-003 was effective on September 8, 2005.

On September 8, 2005, the Commission adopted D.05-09-003, granting PG&E's Petition, but noted the importance of maintaining good relationships between QFs and gas suppliers, and providing QFs an opportunity to request modifications if "...subsequent events have disruptive effects on the ability of QFs to provide energy to utilities."<sup>3</sup>

On October 12, 2005, Petitioning QFs requested that D. 05-09-003 be modified to defer the effective date from September 8, 2005 to July 30, 2006.<sup>4</sup>

In a November 14, 2005 response, PG&E requested that the QF Petition be denied.

### **Discussion**

Petitioning QFs do not challenge the legal substance of D.05-09-003, but contend that deferring the effective date will take into account financial arrangements between QFs and gas suppliers. Petitioning QFs state they cannot renegotiate payment arrangements with their suppliers until their current agreements with the suppliers expire in July 2006. Thus, Petitioning QFs contend D.05-09-003 will trigger the very disruptive events that are otherwise anticipated by D.05-09-003, namely, negative effects on the financial standing of the QFs. Petitioning QFs argue that these disruptive events easily can be avoided by delaying the effective date of D.05-09-003 to July 30, 2006.

In response, PG&E points out that Petitioning QFs simply repeat the same claims of supplier problems made in previous filings on this issue. PG&E

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<sup>2</sup> D.05-09-003, *mimeo.*, p. 2

<sup>3</sup> *Id.*, p. 9.

<sup>4</sup> As required by Rule 47 of the Commission's Rules of Practice and Procedure, QFs Petition includes proposed language to carry out the requested modification.

contends Petitioning QFs have presented no new evidence, nor communicated with PG&E regarding gas supplier problems. PG&E argues Petitioning QFs should have filed a declaration explaining the reasons for their requested relief and any new or changed facts regarding QF relationships with gas suppliers.<sup>5</sup>

Our review of the QF Petition indicates that QFs have not presented any new evidence that would lead us to conclude that D.05-09-003, with an effective date of September 8, 2005, will have a disruptive effect on the ability of QFs to provide energy or harm the relationships between QFs and their gas suppliers. Petitioning QF arguments for modifying D.05-09-003 are essentially the same arguments used in opposing PG&E's Petition to modify D.01-03-067. As PG&E points out, if Petitioning QFs were experiencing problems with their gas suppliers that might affect their ability to deliver energy, as a first step we would expect the Petitioning QFs to contact PG&E to resolve the problem. Second, we would expect Petitioning QFs to file a declaration, as required by Rule 47(b), stating any new or changed facts or evidence supporting a modification. Petitioning QFs appear to have done neither. Therefore, we deny the QF Petition.

### **Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and Bruce DeBerry is the assigned ALJ in this proceeding.

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<sup>5</sup> Rule 47(b) of the Commission's Rules of Practice and Procedure addressing petitions for modification requires that "Allegations of new or changed facts must be supported by an appropriate declaration or affidavit."

**Comments on Draft Decision**

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_.

**Findings of Fact**

1. Petitioning QFs request that the Commission modify D.05-09-003 such that the effective date is July 30, 2006, rather than the adopted effective date of September 8, 2005.
2. Petitioning QFs do not challenge the legal substance of D.05-09-003.
3. Petitioning QFs have not presented any new evidence that D.05-09-003, with an effective date of September 8, 2005, will have a disruptive effect on the ability of QFs to provide energy, or harm the relationships between QFs and their gas suppliers.
4. Petitioning QFs' arguments to modify D.05-09-003 are essentially unchanged from arguments submitted against PG&E's Petition to modify D.01-03-067.
5. There is no evidence that Petitioning QFs have contacted PG&E to resolve any QF problems with gas suppliers.

**Conclusions of Law**

1. Rule 47(b) of the Commission's Rules of Practice and Procedure requires that "Allegations of new or changed facts must be supported by an appropriate declaration or affidavit."
2. The Petitioning QFs' request to modify D.05-09-003 should be denied.
3. The following order should be effective immediately.

**O R D E R**

**IT IS ORDERED** that the Petition of Juniper Generation, LLC and PE Berkeley, Inc. for modification of Decision 05-09-003 is denied.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.